



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

December 12, 2000

Trevor Potter, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, DC 20006

RE: MUR 5161
Lincoln Diaz-Balart for Congress Committee and
Jose A. Riesco, as treasurer

Dear Mr. Potter:

On November 28, 2000, the Federal Election Commission found that there is reason to believe Lincoln Diaz-Balart for Congress Committee and Jose A. Riesco, as treasurer, your clients, violated 2 U.S.C. §§ 434(b)(1), 441a(f), and 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Eric Brown, the staff member assigned to this matter, at (202) 694-1650.

Sincerely,



Darryl R. Wold
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Conciliation Agreement

cc:
The Honorable Lincoln Diaz-Balart
9737 N.W. 41st Street, #131
Miami, FL 33178

21-04405-1095

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

MUR: 5161

RESPONDENTS: Lincoln Diaz-Balart for Congress Committee and
Jose A. Riesco, as treasurer

I. GENERATION OF MATTER

This matter was generated by an audit of Lincoln Diaz-Balart for Congress Committee and Jose A. Riesco, as treasurer ("the Committee" or "Respondents"), undertaken in accordance with 2 U.S.C. § 438(b). The audit covered the period from January 1, 1997 through December 31, 1998.

II. FACTUAL AND LEGAL ANALYSIS

A. Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), provides that no person shall make contributions to any candidate's authorized committee with respect to any election for federal office which, in the aggregate, exceed \$1,000. 2 U.S.C. § 441a(a)(1)(A). No candidate committee shall knowingly accept any contribution in excess of this limitation. 2 U.S.C. § 441a(f). Contributions which on their face or when aggregated with other contributions from the same contributor exceed the Act's contribution limitations shall be refunded within 60 days, redesignated, or reattributed. 11 C.F.R. §§ 103.3(b)(3); 110.1(b)(2); 110.1(k)(3).

The Act prohibits political committees from accepting contributions from corporations. 2 U.S.C. § 441b(a). Contributions that present genuine questions as to whether they were made by corporations may be, within ten days of receipt, either deposited or returned to the contributor. 11 C.F.R. § 103.3(b)(1). If deposited, the treasurer shall make best efforts to determine the

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legality of the contribution. *Id.* If the contribution cannot be determined to be legal, the treasurer shall refund the contribution within 30 days. *Id.*

The Act provides that political committees must file periodic reports of receipts and disbursements. 2 U.S.C. § 434(a). Section 434(b) of the Act itemizes the required contents of these periodic reports. The Act's reporting requirements provide that political committees must report the amount of cash on hand at the beginning of the reporting period, 2 U.S.C. § 434(b)(1).

B. Analysis

1. Excessive Contributions

The Commission's audit revealed that the Committee accepted contributions from 18 individuals which exceeded the contribution limitation by a total of \$17,700.¹ See 2 U.S.C. § 441a(a)(1)(A). These contributions were not reattributed, redesignated, or refunded within the 60-day periods provided for by 11 C.F.R. §§ 110.1(b)(5)(ii)(B), 110.1(k)(3)(ii)(B), and 103.3(b)(3). The Committee's refunds total \$18,700 and were made outside of the 60-day period provided for by 11 C.F.R. § 103.3(b)(3). Therefore, there is reason to believe that Lincoln Diaz-Balart for Congress Committee and Jose A. Riesco, as treasurer, violated 2 U.S.C. § 441a(f).

2. Prohibited Contributions

The Commission's audit revealed that the Committee accepted 23 corporate contributions totaling \$10,630.² The Committee refunded the total amount outside of the 30-day period

¹ The number of contributors making excessive contributions increased from 15 in the Final Audit Report to 18 because previously, certain individuals with the same last name were treated as one contributor, although each gave amounts exceeding the limitation.

² The Commission's audit revealed that the 23 corporations are Anesthesia Group of Miami, Inc.; AquaMar 176, Inc.; B.C.C. Enterprises, Inc.; Calleja's Shutters, Inc.; Caribbean Americas Beauty Expo., Inc.; Coastal Insurance Group, Inc.; F&C Development Corp.; Florida National College, Inc.; Florida Property and Casualty Assoc., Inc.; Global Marketing Enterprises; Gomez Barker Associates, Inc.; Investors Realty Services, Inc.; Lakeside Developers, Inc.; Miguel Lopez, Jr., Inc.; Ocean Beach 167, Inc.; OPAC Enterprises, Inc.; Patient Transport

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provided for by 11 C.F.R. § 103.3(b)(1). Therefore, there is reason to believe that Lincoln Diaz-Balart for Congress and Jose A. Riesco, as treasurer, violated 2 U.S.C. § 441b(a).

3. Financial Misstatements

The Commission's audit revealed that the Committee's January 1, 1997 beginning cash on hand was overstated by \$114,076. Therefore, there is reason to believe that Lincoln Diaz-Balart for Congress Committee and Jose A. Riesco, as treasurer, violated 2 U.S.C. § 434(b)(1).

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